

FILED  
BILLINGS DIV.  
2010 FEB 1 AM 11 46  
PATRICK E. DUFFY, CLERK  
BY \_\_\_\_\_  
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION**

<b>SANTIAGO VALDEZ,</b>	)	
	)	<b>CV-07-114-BLG-RFC</b>
<b>Plaintiff,</b>	)	
<b>vs.</b>	)	
	)	<b>ORDER ADOPTING FINDINGS</b>
<b>MIKE LINDER, et al.,</b>	)	<b>AND RECOMMENDATIONS OF</b>
	)	<b>U.S. MAGISTRATE JUDGE</b>
<b>Defendant.</b>	)	
_____	)	

On November 4, 2009, United States Magistrate Judge Carolyn Ostby entered Findings and Recommendation (*Doc. 54*) with respect to this case.

Magistrate Judge Ostby recommends that Plaintiff's Complaint be dismissed.

Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, Plaintiff filed an objection on November 27, 2009. Plaintiff's objections require

this Court to make a *de novo* determination of those portions of the Findings and Recommendations to which objection is made. 28 U.S.C. § 636(b)(1). Plaintiff's objections are not well taken.

After a *de novo* review, the Court determines the Findings and Recommendation of Magistrate Judge Ostby are well grounded in law and fact and HEREBY ORDERS they be adopted in their entirety.

Valdez contends that the Defendants conspired to violate his federal constitutional rights under the Fourth, Fifth, Eighth, and Fourteenth Amendments of the United States Constitution as well as provisions of the Montana Constitution. He alleges Defendants stated they had a warrant for Valdez's arrest but they did not and the warrant produced later was invalid.

Valdez was convicted for failing to register as a sex offender, and the undisputedly valid arrest warrant on that charge was issued by Chief Judge Richard F. Cebull on July 20, 2007. See Criminal Action 07-104-MRH, Court's Doc. 1.

Therefore, the only possible remaining claim for false arrest/imprisonment would be for the time between July 17, 2007, when Valdez was arrested on the robbery warrant and July 20, 2007, when the failure to register warrant was issued.

Given all the information submitted to the Court by Valdez, this claim is frivolous must be dismissed.

Valdez's allegations have been construed as a Fourth Amendment false arrest claim based upon the July 17, 2007 arrest. Valdez's claims are frivolous because Defendants arrested Valdez pursuant to a facially valid warrant. A certified copy of the warrant, dated July 3, 2007, was submitted by Valdez on October 22, 2009. An arrest pursuant to a facially valid warrant does not establish a constitutional violation. *Baker v. McCollan*, 443 U.S. 137, 144, 99 S.Ct. 2689, 2694, 61 L.Ed.2d 433 (1979); *Erdman v. Cochise County*, 926 F.2d 877, 882 (9th Cir. 1991). Officers are entitled to rely on an issuing judge's decision that probable cause exists, and will be shielded from any liability relating to the arrest if they relied on the judge's decision in good faith. See also *Alvarado v. Bratton*, 299 Fed. Appx. 740, 742 (9th Cir. 2008) (recognizing *Baker v. McCollan* rule that a detention of three days pursuant to a valid warrant does not and could not amount to a deprivation of liberty without due process of law).

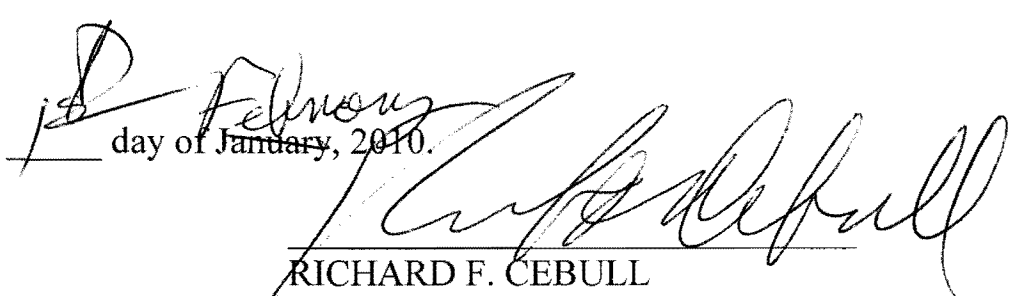
Accordingly, **IT IS HEREBY ORDERED** that Valdez's Complaint is **DISMISSED** as frivolous. Plaintiff's Motion to Stay (*doc. 55*) is **DENIED**.

The Clerk of Court is directed to close this matter and enter judgment in favor of Defendant, pursuant to Rule 58, F.R.Civ.P.

The Clerk of Court is also directed to have the docket reflect that the dismissal counts as a strike, pursuant to 28 U.S.C. § 1915(g) because Valdez's claims are frivolous.

The Clerk of Court is further directed to have the docket reflect that the Court certifies, pursuant to Fed.R.App.P. 24(a)(3)(A) that any appeal of this decision would not be taken in good faith. The record makes plain the instant Complaint is frivolous and it lacks arguable substance in law or fact.

DATED this 1<sup>st</sup> day of January, 2010.

  
RICHARD F. CEBULL  
UNITED STATES DISTRICT JUDGE